

Ref: FOI/GS/ID 6324

**Please reply to:**  
FOI Administrator  
Trust Management  
Maidstone Hospital  
Hermitage Lane  
Maidstone, Kent  
ME16 9QQ  
Email: mtw-tr.foiadmin@nhs.net

26 October 2020

## **Freedom of Information Act 2000**

I am writing in response to your request for information made under the Freedom of Information Act 2000 in relation to Public Sector Equality Duty (PSED) compliance policy.

*You asked:*

- 1. For 1 April 2010 to 31 March 2020, information provided by financial year, your Public Sector Equality Duty (PSED) compliance policy and reports on how you've met this policy.*
- 2. For 1 April 2010 to March 2020, information provided by financial year, provide a list of all LGBT organisations (e.g. Stonewall, Mermaids, Gendered Intelligence, GIRES, Action LGBT, Transhealth) you have:*
  - a. Consulted;*
  - b. Received training from/ helped formulate training for Trust staff – including classroom based and e-learning;*
  - c. Paid monies to for goods and services, advertised on your website or intranet, links or print outs of information;*
  - d. Granted permission to display/share/use Trust logo.*
- 3. For 1 April 2010 to 31 March 2020, information provided by financial year, provide a list of all women's organisations (e.g. local or national domestic abuse or rape crisis charities, Women's Budget Group, Timewise, Pregnant then Screwed, Woman's Place UK, Fair Play for Women) you have:*
  - a. Consulted;*
  - b. Received training from/ helped formulate training for Trust staff – including classroom based and e-learning;*
  - c. Paid monies to for goods and services; advertised on your website or intranet, links or print outs of information;*
  - d. Granted permission to display/share/use Trust logo.*
- 4. The money spent annually, during this same period, on supporting and promoting LGBT groups and causes including:*

- a. *LGBT/rainbow merchandising, such as involvement in diversity champion schemes, lanyards, flags, posters and other materials;*
- b. *Attending conferences and events and training for Trust staff - including classroom based and e-learning;*
- c. *Subscriptions and donations to LGBT organisations such as Stonewall, Gendered Intelligence and Mermaids, GIRES, Action LGBT, Transhealth.*
5. *The money spent annually, during this same period, on supporting and promoting women's groups and causes including:  
International women's day, domestic violence merchandising, such as involvement in champion schemes, lanyards, flags, posters and other materials; please separately list schemes to tackle domestic violence from the overall spending.*
  - a. *Attending conferences and events and training for Trust staff - including classroom based and e-learning;*
  - b. *subscriptions and donations to women's organisations such as local or national domestic abuse or rape crisis charities, Women's Budget Group, Timewise, Pregnant then Screwed, Woman's Place UK, Fair Play for Women.*
6. *Can you forward all of your official policies, including your staff/patient equality policy, Women's policy, LGBT policy and Transgender policy, children's transgender policy, any inpatient school materials, any patient treatment guidelines and patient literature/posters written in conjunction with the LGBT groups. Please detail the contribution each LGBT group made to each policy/guideline.*
7. *Can you forward all of your official policies, including your staff/patient equality policy, Women's policy, LGBT policy and Transgender policy, children's transgender policy, any inpatient school materials any patient treatment guidelines and patient literature/posters written in conjunction with the women's groups. Please name and each women's group and detail the contribution each made to policy/guidelines.*
8. *Did your Trust obtain legal advice to determine the legality of the Transgender policy, specifically in terms of the Equality Act (2010) and single-sex exemptions? If so, what law firm did you consult with and what were the associated costs?*
9. *Which staff roles and other NHS organisations - include name of NHS organization, date and policy referred to - provided input to your transgender policy, who is the executive owner of the transgender policy and of the approved committee consultation comments, where were they taken from and which role reviewed them? Please name any internal networks, committees or groups also consulted.*

Trust response:

We do not have access to data that pre-dates April 2016 and have answered the request to the best of our ability.

1. The PSED compliance policy is currently under review – we would need to know specifically what reports are required in order to provide them
2.
  - a. Stonewall annually between 2015 and 2019
  - b. none

- c. none
- d. none
- 3. None
- 4.
  - a. Stonewall diversity champion partnership, NHS rainbow badges in 2019 and 2020 (funded by the Trust Charity), rainbow badge posters as with badges
  - b. none
  - c. none
- 5. none
- 6. Transitioning at Work policy attached with appendices. Stonewall, trans staff and our LGBT network reviewed and contributed to the policy.
- 7. none
- 8. No – our Trust Solicitor is part of the Policy Ratification Committee
- 9. See q6. Exec owner is the Director of Workforce. Details of comments are found in the policy.

## **MAIDSTONE AND TUNBRIDGE WELLS NHS TRUST**

### **Gender Identity Transitioning at Work Policy and Procedure**

**Target audience:** All Trust staff

**Main author:** Head of Staff Engagement and Equality

**Contact details:** [jo.garrity@nhs.net](mailto:jo.garrity@nhs.net) / 07770678019

**Other contributors:** Trans staff member  
Stonewall

**Executive lead:** Director of Workforce

**Directorate:** Workforce

**Specialty:** Human Resources

**Supersedes:** First issue

**Approved by:** Senior HR Meeting, 20<sup>th</sup> April 2017

**Ratified by:** Policy Ratification Committee, 7<sup>th</sup> July 2017

**Review date:** July 2020 or at times of significant change

Disclaimer: Printed copies of this document may not be the most recent version.

The master copy is held on Q-Pulse Document Management System

This copy – REV1.0

## Document history

|   |  |
|---|--|
| <b>Requirement for document:</b>        | <p>The purpose of this policy is to provide guidance for the support of staff transitioning from the gender assigned at birth to their gender identity.</p> <ul style="list-style-type: none"> <li>• The Equality Act 2010</li> <li>• The Gender Recognition Act 2004</li> <li>• Employment Rights Act 1996</li> <li>• Health and Safety at Work Act 1974</li> <li>• Trade Union and Labour Relations (Consolidation) act 1992</li> <li>• Protection from Harassment Act 1997</li> <li>• Human Rights Act 1998</li> <li>• National Terms and Conditions for Medical Staff</li> </ul> |
| <b>Cross references (external):</b>     | <ul style="list-style-type: none"> <li>• Gender Identity Research and Education Society (GIREs) (July 2016) <a href="http://gires.org.uk/index.php">http://gires.org.uk/index.php</a></li> <li>• Stonewall charity (<a href="http://www.stonewall.org.uk">www.stonewall.org.uk</a> )</li> <li>• The Gender Recognition Act 2004</li> <li>• Data Protection Act 1998</li> <li>• The Human Rights Act 1998</li> </ul>  |
| <b>Associated documents (internal):</b> | <ul style="list-style-type: none"> <li>• Maidstone and Tunbridge Wells NHS Trust. <i>Bullying and Harassment Policy and Procedure</i> [RWF-OPPPCS-NC-WF24]</li> <li>• Maidstone and Tunbridge Wells NHS Trust. <i>Equality and diversity policy and procedure (incorporating Single Equality Scheme (SES))</i> [RWF-OPPPCS-NC-WF70]</li> </ul>   |

|                  |                |                   |                    |
|------------------|----------------|-------------------|--------------------|
| <b>Keywords:</b> | Transition     | Gender identity   | Sexual orientation |
|                  | Transgender    | Gender expression | LGBT               |
|                  | Trans          | Gender fluid      | Gender variance    |
|                  | Gender neutral | Non binary        | Cisgender          |

| <b>Version control:</b> |  |              |
|-------------------------|--|--------------|
| <b>Issue:</b>           | <b>Description of changes:</b>   | <b>Date:</b> |
| 1.0                     | This policy has been introduced to support staff transitioning their gender identity in the workplace. | July 2017    |
| 2.0                     | Updated Glossary and other text to reflect contemporary wording  | October 2020 |

## **Policy statement for Gender Identity Transitioning at Work**

This policy applies to all Trust staff to enable them to support staff who are transitioning from the gender assigned to them at birth to their gender identity. Included is the process for managers to enable them to effectively manage an employee through their transition ensuring adherence to all associated laws and best practice.

### **Gender Identity Transitioning At Work Policy and Procedure**

|                           |   |           |
|---------------------------|---|-----------|
| <b>1.0</b>                | <b>Introduction and scope</b>             | <b>6</b>  |
| <b>2.0</b>                | <b>Definitions / glossary</b>             | <b>6</b>  |
| <b>4.0</b>                | <b>Training / competency requirements</b> | <b>10</b> |
| <b>5.0</b>                | <b>Procedure</b>                          | <b>10</b> |
| <b>APPENDIX 1</b>         |   | <b>15</b> |
| <b>APPENDIX 2</b>         |   | <b>16</b> |
| <b>APPENDIX 3</b>         |   | <b>18</b> |
| <b>FURTHER APPENDICES</b> |   | <b>19</b> |

## 1.0 Introduction and scope

Maidstone and Tunbridge Wells NHS Trust (MTW) embraces equality and diversity in the workplace and provides equal opportunity for all staff regardless of age, disability, gender assignment, marriage and civil partnership, pregnancy and maternity, race (including colour, nationality and ethnic or national origins), religion or belief, and sex and sexual orientation. MTW welcome diversity because it recognises that workforce diversity, when fully utilised, leads to inclusion of more ideas and viewpoints, which in turn leads to more creativity and innovation. When individuals are able to bring their whole selves to work, they thrive, and MTW thrives. The Trust aims to attract, utilise and retain the best talent which includes being viewed as an employer of choice for a diverse workforce.

The purpose of this document is to help foster an understanding of transgender issues in the workplace and to provide guidance to all MTW staff on how to achieve a welcoming and supportive environment for MTW employees undergoing gender transition in the workplace.

## 2.0 Definitions / glossary

The definitions provided here are not intended to label staff but rather to assist in understanding this policy and the legal obligations of all staff. Employees may or may not use these terms to describe themselves.

- **Bi:** An umbrella term used to describe a romantic and/or sexual orientation towards more than one gender. Bi people may describe themselves using a variety of terms including (but not limited to) bisexual, pan and queer.
- **Cisgender or Cis:** Someone whose gender identity is the same as the sex they were assigned at birth. Non-trans is also used by some people.
- **Deadnaming:** Calling someone by their birth name after they have changed their name.
- **Gay:** Refers to a man who has a romantic and/or sexual orientation towards men. Some women define themselves as gay rather than lesbian.
- **Gender dysphoria:** Used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity.
- **Gender expression:** How a person chooses to outwardly express their gender, within the context of societal expectations of gender.
- **Gender identity:** A person's internal, deeply-felt sense of being male, female, or something else, which may not correspond to the sex they were assigned at birth.
  - **Gender reassignment:** Another way of describing a person's transition. To undergo gender reassignment usually means to undergo some sort of medical intervention but it can also mean changing names, pronouns, dressing differently and living in their self-identified gender.
  - **Gender Recognition Certificate (GRC):** This enables trans people to be legally recognised in their affirmed gender and to be issued with a new birth certificate. Not all trans people will apply for a GRC and the

lower age limit to apply is 18. A GRC is not required to change gender markers at work or to legally change gender on other documents such as a passport.

- **Intersex:** A term used to describe a person who may have the biological attributes of both sexes or whose biological attributes do not fit with societal assumptions about what constitutes male or female. Intersex people may identify as male, female or non binary.
- **Lesbian:** Refers to a woman who has a romantic and/or sexual orientation towards women.
- **LGBT:** The acronym for lesbian, gay, bi and trans.
- **Non-binary:** This is an umbrella term for people whose gender identity doesn't sit comfortably with 'man' or 'woman'.
- **Orientation:** An umbrella term describing a person's attraction to other people. This attraction may be sexual (sexual orientation) and/or romantic (romantic orientation). These terms refers to a person's sense of identity based on their attractions or lack of.
- **Pan:** Refers to a person whose romantic and/or sexual orientation towards others is not limited by sex or gender.
- **Pronoun:** Words used to refer to people's gender in conversation. For example 'he' or 'she'. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they/their and ze/zir.
- **Queer:** A term used by those wanting to reject specific labels of romantic orientation, sexual orientation and /or gender identity.
- **Trans:** An umbrella term that can be used to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth.

Trans people may describe themselves using or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer, gender fluid, non binary, gender variant , trans man, trans women.

- **Transgender Man:** A term used to describe someone who is assigned female at birth but identifies and lives as a man. This may be shortened to trans man or FTM – an abbreviation for female to male.
- **Transgender Woman:** A term used to describe someone who is assigned male at birth but identifies and lives as a woman. This may be shortened to trans woman or MTF– an abbreviation for male to female.
- **Transitioning:** The steps a trans person make take to live in the gender with which they identify. Each person's transition will involve different things. For some this involves medical intervention, such as hormone therapy and surgeries, but not all trans people want or are able to have this. Transitioning also might involve things such as telling friends and family, dressing differently and changing official documents.

## 2.1 Summary of the law

- **The Equality Act 2010**

This act specifically protects trans people as well as the other protected characteristic groups. We have a duty to have due regard to the following:

- Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act

- Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Fostering good relations between people who share a relevant protected characteristic and persons who do not share it

- **Protected Characteristics**

People must not be discriminated against should they come under one or more of the following characteristic groups which are protected by the Equality Act 2010

- Age (refers to a person belonging to a particular age or range of ages)
- Disability (refers to a person with a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day to day activities)
- Gender reassignment ( a person's transition)
- Marriage and civil partnership (marriage now includes same sex couples. Same sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples)
- Pregnancy and maternity (Being pregnant or expecting a baby. Maternity refers to the period after the birth. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth and this includes breastfeeding).
- Religion and belief (includes religious and philosophical beliefs including lack of belief)
- Sex (a man or a woman)
- Sexual orientation (a person's sexual attraction to other people or lack of.
- **Direct discrimination**

Occurs when a person is treated less well because they have a protected characteristic. This applies when a person is discriminated against because they are perceived to be trans – even if they are not. Those associated with trans people such as partners, spouses, other family members or carers are also protected against discrimination.

- **Indirect discrimination**

Occurs when a rule that is neutral as it applies to most people, creates a disadvantage for a person with a protected characteristic. It is not enough for a manager to say that they are treating a trans person in the same way as they would any other employee if that treatment puts a trans person at a disadvantage.

- **Harassment**

Is any unwanted behaviour that violates a person's dignity or creates a hostile environment.

- **Victimisation**

Occurs when someone is badly treated as a direct result of having complained, either themselves, or someone else has complained on their behalf about discriminatory treatment under the Equality Act.

- **The Gender Recognition Act (2004)**



This act allows those who have changed their gender role permanently to obtain a gender recognition certificate (GRC). This means that they have their new gender status 'for all purposes' – the person automatically qualifies for a birth certificate if the birth was originally registered in the UK. If a person has a GRC, information about the person's gender history is described as 'protected information' so must not be passed on to anyone without the permission of the person concerned. This information includes records held by the Inland Revenue and Healthcare Records (health records pre and post transition are merged).

A GRC is not needed in order for change one's name, pronouns or the way one dresses at work. Trans people must have lived in their 'affirmed' gender (what it is after they change their gender role) for at least two years before being granted their GRC.

- **Data Protection Act (1998)**

All records of the individual's personal life and medical history (sensitive personal data) must be secured in accordance with the Data Protection Act including password protection and should be kept for no longer than is absolutely necessary.

- **The Human Rights Act (1998)**

This act underpins all equality legislation that relates to employers in the public sector and those for whom we provide services. Article 8 requires that all people must be treated with respect, dignity and fairness and to protect their privacy in family life and correspondence. Article 3 creates an absolute ban on degrading treatment.

### **3.0 Duties**

- **Trust Board**

Responsible for ensuring that this policy is adhered to by all staff in the Trust.

- **Human Resources (HR)**

Responsible for providing advice and guidance to both line managers and employees on the interpretation of this policy and their rights and obligations.

- **The Head of Staff Engagement and Equality**

Responsible for providing advice and support to all staff to support the gender transition of individuals within the Trust.

- **Occupational Health**

Responsible for advising managers on fitness for work issues as well as appropriate advice on any medical issues which may impact on an individual's ability to carry out the full scope of their job. This may include suggesting temporary adjustments to help those returning to work. Confidential support and/or counselling may be offered.

- **Line Managers**

Managers are responsible for:

- Ensuring staff are made aware of this policy
- Meeting with transitioning individuals to create Workplace Transition Plans
- Fulfilling all requirements of the Workplace Transition Plan including completion of appropriate HR documentation
- Ensuring confidentiality is met
- Utilising the advice of the HR Business Partner when required

- **Transitioning individuals**

Responsible for working with their managers and HR Business Partners (where required) to complete the Workplace Transition Plan

- **All Trust staff**

Are responsible for treating all trans staff with respect, dignity and fairness.

All Trust staff must be aware that they must:

- Not discriminate against trans people
- Not harass trans people or create a hostile environment by using transphobic language (whether or not this is in the presence of a trans person)
- Not comment on someone's appearance or "assess" whether someone "passes" as their gender identity
- Not make assumptions about trans people
- Not interrogate or speculate on someone's gender identity or orientation
- Ensure the correct pronouns are used when addressing or mentioning a trans person; intentional and/or consistent mis-gendering is not acceptable.
  - ✓ Correct pronouns – ask the individual how they would like to be addressed
    - ✓ Use 'Her' and 'She' for trans women
    - ✓ Use 'He' and 'Him' for trans men.
    - ✓ Use 'They' and 'their' or 'ze/zir' for non-binary, gender fluid and/or gender non-conforming
- ✓ Use 'they' if there is any doubt about the gender – do not speculate and get it wrong
- Not victimise a trans person who has complained about a transphobic incident
- Ensure that if a person takes time off for treatment associated with gender reassignment, this must not be used against them, e.g. as a reason for not promoting them
- Maintain the privacy and dignity of trans people
- Ensure that measures are in place to support a person who is undergoing transition

#### **4.0 Training / competency requirements**

No training/competency requirements at this time. However, advice and guidance is available from:

Head of Staff Engagement and Equality

07770678019

#### **5.0 Procedure**

Transitioning employees have the right to be open and to experience a workplace free of discrimination, including harassment. All employees have the right to express gender identity without fear of consequences.

##### **5.1 Preparing for transition**

The Trust recognises that trans people may be concerned about how their manager and colleagues will react to them when they disclose their intention to transition. This is likely to make it hard for them to perform as well as they might, so it is important for the manager and for the individual to have confidence in the transition policy.

Each trans person's journey is unique and it is imperative that the process is led by the person transitioning. The manager should not make any

assumptions about how the individual might want things to progress, e.g. how they wish to dress or use of toilets and changing facilities.

The first action is for the manager and the individual to meet to discuss how the individual wants to proceed. Actions will be agreed before the transition occurs and plans made together about how to proceed to ensure that the transition is successful. Sometimes this will not be possible as the transition may take place ahead of a discussion with the manager. A support meeting between the manager and the member of staff should take place as soon as possible.

A Workplace Transition Plan must be developed, covering a number of possible topics outlined in Appendix 4. This Plan shows commitment to supporting the employee at all stages but can be amended if necessary. Initial plans may not always work out as expected so there must be flexibility.

## **5.2 Workplace Transition Plan**

The Workplace Transition Plan is a confidential document. It does not represent a binding and unchangeable document but rather a commitment to engage with, and support, the employee at all stages. Hard copies must be secured in a sealed envelope and then another sealed envelope with the name(s) of the person(s) who are allowed to open them, clearly marked. Authorised people would normally be the line manager and HR Business Partner and this should be agreed with the individual. The document must not be accessible to unauthorised personnel – it should be in a locked drawer or file. Any information held in computer files must be password protected as part of the overall data protection.

The Plan should be reviewed at least every three months, but reassured at each significant stage of the process, and at any time that the member of staff asks for this to be done. Discussions will pinpoint any likely problem areas. Steps must be taken to avoid these rather than deal with them after they have arisen. Action will not be taken without first seeking the insights and consent of the individual.

The initial meetings and the drafting of the Plan may be undertaken by the line manager in collaboration with the HR Business Partner. The trans member of staff should be offered the support of a colleague and/or union representative at all the meetings where transition is discussed, the Plan is developed, agreed, and subsequently reviewed. The trans member of staff and the line manager (or other senior member of staff) should sign this Plan once it is agreed.

All participants in the meetings will keep these discussions in complete confidence.

Issues which may be considered by the individual and the line manager include:

- The date when the transition will officially occur
- The change of name, personal details and gender markers
- How the individual would like to be addressed – i.e. the appropriate use of pronouns
- Determine what updates should be made to the transitional employee's records and when they will be made
- Determine dates of any leave that may be needed for pre-scheduled medical procedures

- Determine whether there are duties within the role that should not be undertaken at specific times within the process; risk assessments
- Agreeing any dress code requirements. Flexibility and compromise may be required for those who cannot meet any departmental code taking into consideration Health and Safety requirements and Personal Protective Equipment (PPE) requirements.
- Use of toilets and changing facilities
- What the implications are for pensions
- Decide how and in what format the transitioning employees colleagues are made aware of the individual's transition; it is up to the transitioning employee to decide if they would like to make some colleagues aware of their transition on a one-to-one basis before it is officially announced
- Decide what, if any, training will be given to colleagues
- Record keeping of sensitive information

### **5.3 Name and title change**

After discussion with the individual, the manager agrees how and when the name change is to occur. Name change can occur without any legal process, informally, upon request by the trans person. The manager should not insist on being provided with more than a simple signed statement saying that they are changing from the old name and title to the new one. In addition, driving licences and passports can be presented; these are easily changed with a doctor's letter or the doctor's letter itself may be used as evidence of the individual's intention to transition.

The trans person's records and name badges must be updated to show the current name and title.

An employee has the right to be addressed by the name and pronoun that correspond to their gender identity. The intentional or persistent refusal to respect an employee's gender identity (e.g. intentionally deadnaming (referring to the employee by a previous name) or pronoun that does not correspond to the employee's gender identity) can constitute harassment and is a violation of this policy.

The changes to the individual's records are managed under the Data Protection Act 1998. The line manager must ensure that, in accordance with this Act, previous names, titles and pronouns which appear in old documents cannot be seen except by the small number of people who are authorised to see them (see Workplace Transition Plan).

Relevant and non gender specific information should be transferred to a new set of personnel records, for example sickness records, disciplinary investigations.

The line manager must complete a Change to Employee Personal Details Form detailing the change to name and title and send to the Recruitment Department at Maidstone Hospital. The Recruitment staff will amend the individual's ESR record which will not retain previous name and title on ESR. Changes to IT systems such as PAS, Theatres, Radiology and the IT network should be made through the Head of Staff Engagement and Equality who will ensure that the minimum number of people are involved.

### **5.4 Time off for medical treatment**

Time off for treatments associated with gender reassignment are specifically protected under the Equality Act 2010 so that absences cannot be used

against them when, for instance, considering promotion. Trans people may need to have time off during their transition that is not in accordance with MTW's Managing Attendance at Work Policy. For further advice, please contact the Head of Staff Engagement and Equality or an HR Business Partner.

It is good practice to discuss as far as possible in advance the time away from work that an individual will need. The Plan can only be a general guide initially. Timescales may change over time and be unpredictable.

### **5.5 Dress code**

It is good practice to allow enough flexibility in the MTW dress code to accommodate the process of transition. Where a uniform requires trousers to be worn by all sexes, trans women may prefer to wear a skirt so that others are clear about their gender status. This should be supported where possible and available. Where necessary, a new uniform should be ready well in advance of the change of gender. Flexibility must be extended to those who live androgynously (neutral gender expression) and would not be comfortable in a clearly female or male mode of dress.

It is important that consideration is given to gender fluid people who may present sometimes in one gender and sometimes in another. They may need both uniforms in order to meet the gender specific dress code at all times, taking into consideration Health and Safety and PPE requirements.

Please refer to the Dress, Uniform and Identification Badge Policy and Procedure or seek advice from the Head of Staff Engagement and Equality or an HR Business Partner.

### **5.6 Use of toilets and changing facilities**

Facilities such as toilets and changing rooms should be accessed according to the gender identity of the employee. It is never appropriate to insist that a person who has transitioned use only the toilets that are meant for disabled people or gender-neutral toilets unless these are the only facilities available or they are preferred by the trans person. If others do not wish to share the "ladies" or "gents" facilities with a trans person then it is they who must use alternative facilities and not the trans person.

Gender-neutral facilities may be available as an alternative for any person, whether trans or not, who does not wish to share with others. This may be especially important for some trans individuals (non-binary for instance) who do not identify either as men or as women and would be uncomfortable entering facilities designated "ladies" or "gents".

All users of all facilities should be properly prepared to welcome any trans person who is starting to use the appropriate facilities.

### **5.7 Pensions and retirement**

Everyone born after April 1955 now receive state pension at 65. Women born on or before 5 April 1950 were entitled to a pension at 60. Those born between 1950 and 1955 can claim it at a point between 60 and 65. For state pension purposes, trans people can only be regarded as the sex recorded at birth until they have obtained a new birth certificate under the provisions of the Gender Recognition Act 2004. Otherwise, those born before April 1955 can only claim state pension in accordance with the sex on the original birth certificate – that is for trans women at age 65 and for trans men at 60. Under recent case law, a trans woman is entitled to receive a state pension from the

age of 60 without a Gender Recognition Certificate if she reached that age before 4 April 2005 when the Gender Recognition Act came into force. It is the responsibility of the Trust to take steps to keep confidential the reason for an individual's apparently early or late retirement.

### **5.8 Informing colleagues**

The line manager and the transitioning individual should work out together how best to inform work colleagues about their plan to transition. Trans people are not obliged to inform their employer about their trans history as a condition of employment or promotion. So if a person transitioned before joining the Trust, no information about this should be passed on to the Trust unless absolutely necessary and then only with the permission of the person concerned.

This information is difficult to keep secret when a person changes their gender in the workplace, so careful planning must be done in the run up to that happening. It may not be necessary to inform the entire work team. A case by case decision on the extent of the disclosure of this information should be agreed by the person concerned and the line manager. External clients or agencies that the trans individual is currently working with may also need to be informed.

The wishes of the transitioning individual are most important although line managers and the HR department have a responsibility to see that the process of informing others is safe and respectful. In some circumstances the trans person may wish to disclose these matters personally to some or all of their contacts. If this is the case the manager will need to know when this is going to happen and what kind of information will be given to work colleagues so that support is available to the members of staff concerned.

### **5.9 Team transition meeting**

Should the individual agree for the line manager to disclose information regarding their transition, it may be appropriate to host a work team transition meeting. This may include the transitioning employee, their line manager, their colleagues and any other team or department if they are able to attend where appropriate. It may be worth considering the use of remote conferencing facilities for those unable to attend the meeting in person. This meeting may be supported by the Head of Staff Engagement and Equality and the HR Business Partner.

If the transitioning employee thinks it would be useful, the Gender Identity Transitioning at Work FAQs can be provided at this meeting. It is up to the transitioning employee whether they feel comfortable attending or would prefer not to be there.

The line manager or Head of Service should announce the transition and must:

- State that the Trust is supportive of the individual's transition
- Indicate that the transitioning employee will be presenting themselves in accordance with their gender identity and this should be respected
- Advise colleagues about the transitioning employees new name and preferred pronoun
- Be prepared to manage any potential negative reactions, referring to appropriate Trust policies where necessary
- Be a behavioural model by using the transitioning employee's new name and pronoun in all communication – written and oral, formal and informal

- Make a point that the transition will not change the workplace and that everything should go on as it did previously
- Solicit any questions, referring any that cannot be answered to the Head of Staff Engagement and Equality or an HR Business Partner
- Ensure that staff know where they can go to understand more about gender transition (Head of Staff Engagement and Equality)

### **5.10 Buddy system**

It may be useful to consider the use of a buddy should a trans person want this support. This would be an individual who may or may not be a member of the trans person's team who would provide encouragement and assistance. This would be a relatively informal arrangement, relying on the listening skills and absolute discretion of the buddy. A buddy may be formally identified through the Trust's Ally Programme – more information can be obtained from the Head of Staff Engagement and Equality.

### **5.11 Storage of protected information**

Hard copies of any old documents relating to the trans member of staff that cannot be altered or replaced must be stored securely in a sealed envelope and then in another sealed envelope and marked strictly confidential. The names of those who are allowed to open these envelopes must be clearly written on the outer one.

### **5.12 Religion and belief**

Should any member of staff who has particular religious beliefs or cultural views about gender identity claim that their protected characteristic of "religion or belief" under the Equality Act allows them to refuse to work with or share facilities with a person who is trans – the situation must be managed.

There is no hierarchy among protected characteristics and whilst a person's religion or belief must be respected, it must not be used to discriminate against another person with a protected characteristic.

Therefore, any member of staff discriminating against another with a protected characteristic must be managed in accordance with the Bullying and Harassment Policy.

## **APPENDIX 1**

### **Process requirements**

#### **1.0 Implementation and awareness**

- Once ratified the PRC Chair will email this policy/procedural document to the Clinical Governance Assistant (CGA) who will activate it on the Trust approved document management database on the intranet, under 'Policies & Q-Pulse'.
- A monthly publications table is produced by the CGA which is published on the Trust intranet under 'Policies & Q-Pulse'; notification of the posting is included on the intranet "News Feed" and in the Chief Executive's newsletter.
- On reading of the news feed notification all managers should ensure that their staff members are aware of the new publications.
- This policy and procedure will be made available on the Equality & Diversity pages on the Trust intranet and will be discussed at the LGBT network meeting.

## **2.0 Monitoring compliance with this document**

Allegations of bullying and harassment linked to breaches of this policy and procedure will be investigated appropriately.

## **3.0 Review**

This policy and procedure and all its appendices will be reviewed at a minimum of once every 3 years, following the procedure set out in the 'Principles of Production, Approval and Implementation of Trust Wide Policies and Procedures' [[RWF-OPPPCS-NC-CG25](#)].

If, before the document reaches its review date, changes in legislation or practice occur which require extensive or potentially contentious amendments to be made, a full review, approval and ratification must be undertaken.

If minor amendments are required to the policy and procedure between reviews these do not require consultation and further approval and ratification. Minor amendments include changes to job titles, contact details, ward names etc; they are 'non-contentious'. For a full explanation please see the 'Principles of Production, Approval and Implementation of Trust Wide Policies and Procedures' [[RWF-OPPPCS-NC-CG25](#)]. The amended document can be emailed to the CGA for activation on the Trust approved document management database on the intranet, under 'Policies & Q-Pulse'. Similarly, amendments to the appendices between reviews do not need to undergo consultation, approval and ratification.

## **4.0 Archiving**

The Trust approved document management database on the intranet, under 'Policies & Q-Pulse', retains all superseded files in an archive directory in order to maintain document history.

## **APPENDIX 2**

### **CONSULTATION ON: Gender Identity Transitioning at Work Policy and Procedure**

**Consultation process** – Use this form to ensure your consultation has been adequate for the purpose.

**Please return comments to:** Head of Staff Engagement and Equality

**By date:** 11/11/16



| Job title:  | Date sent<br>dd/mm/yy | Date<br>reply<br>received | Modification<br>suggested<br>?<br>Y/N | Modification<br>made?<br>Y/N |
|---|-----------------------|---------------------------|---------------------------------------|------------------------------|
| <b>The following staff MUST be included in ALL consultations:</b>   |                       |                           |                                       |                              |
| Clinical Governance Assistant   | 20/10/16              | 26/10/16                  | Y                                     | Y                            |
| Chief Pharmacist (if pharmacy/prescribing issues are included in the document)  | N/A                   |                           |                                       |                              |
| Staff-Side Chair  | 20/10/16              |                           |                                       |                              |
| Emergency Planning Team   | 20/10/16              |                           |                                       |                              |
| Head of Staff Engagement and Equality   | N/A                   | N/A                       | N/A                                   | N/A                          |
| Health Records Manager  | 20/10/16              |                           |                                       |                              |
| Transgender staff member (Subject Matter Expert)  | 02/08/16              | 09/08/16                  | Y                                     | Y                            |
| Medical Director  | 10/02/17              | 16/02/17                  | N                                     |                              |
| Workforce Director  | 20/10/16              |                           |                                       |                              |
| Senior HR Business Partner  | 20/10/16              |                           |                                       |                              |
| Head of Communications  | 10/02/17              |                           |                                       |                              |
| Heads of Services   | 10/02/17              |                           |                                       |                              |
| General Managers  | 10/02/17              |                           |                                       |                              |
| Matrons   | 10/02/17              |                           |                                       |                              |
| Chief Nurse   | 10/02/17              |                           |                                       |                              |
| Clinical Directors  | 10/02/17              |                           |                                       |                              |
| Head of Employee Services   | 10/02/17              |                           |                                       |                              |
| HR Business Partners  | 10/02/17              |                           |                                       |                              |
| Medical Staffing Manager  | 10/02/17              |                           |                                       |                              |
| All members of the approving committee:<br>Senior HR Meeting  | 20/04/17              | 20/04/17                  | Y                                     | Y                            |
|   |                       |                           |                                       |                              |
| Stonewall Account Manager   | 08/08/16              | 24/08/16                  | Y                                     | Y                            |
|   |                       |                           |                                       |                              |
| <b>The following staff have given consent for their name to appear within this policy and any appendices:</b>   |                       |                           |                                       |                              |
| Jo Petch  |                       |                           |                                       |                              |
|   |                       |                           |                                       |                              |
| The role of those staff being consulted upon as above is to ensure that they have shared the policy and procedure for comments with all staff within their sphere of responsibility who would be able to contribute to the development of the policy and procedure. |                       |                           |                                       |                              |

**To obtain a mailing list for the members of the approving committee** please contact the committee's administrator. Trust committees and their Chairs are described in the following document:

[Trust Committee and Governance Structure Chart \[RWF-OWP-APP2\]](#)

## APPENDIX 3

### Equality impact assessment

This policy includes everyone protected by the Equality Act 2010. People who share protected characteristics will not receive less favourable treatment on the grounds of their age, disability, gender, gender identity, marital or civil partnership status, maternity or pregnancy status, race, religion or sexual orientation. The completion of the following table is therefore mandatory and should be undertaken as part of the policy development and approval process. **Please note that completion is mandatory for all policy and procedure development exercises.**

|  |  |
|--|--|
| <b>Title of policy or practice</b>   | Gender Identity Transitioning at Work Policy and Procedure   |
| <b>What are the aims of the policy or practice?</b>  | The purpose of this policy is to provide guidance for the support of staff transitioning from the gender assigned at birth to their gender identity. |
| <b>Identify the data and research used to assist the analysis and assessment</b>                                       | Staff consultation as defined in Appendix 2  |
| <b>Analyse and assess the likely impact on equality or potential discrimination with each of the following groups.</b> | <b>Is there an adverse impact or potential discrimination (yes/no). If yes give details.</b>   |
| Gender identity  | Yes – staff will be supported to ensure that their gender identity is protected  |
| People of different ages   | No   |
| People of different ethnic groups  | No   |
| People of different religious beliefs  | Yes – staff will receive training to ensure that their religious beliefs do not adversely impact on trans staff                                      |
| People who do not speak English as a first language (but excluding Trust staff)  | Yes – interpreters can be made available   |
| People who have a physical or mental disability or care for people with disabilities                                   | Yes – support can be provided to ensure that they have a full understanding of the policy  |
| People who are pregnant or on maternity leave  | No   |
| Sexual orientation (LGB)   | Yes – staff will receive training to ensure that their sexual orientation does not adversely impact on trans staff                                   |
| Marriage and civil partnership   | No   |
| Gender reassignment  | Yes – staff undergoing gender reassignment will be fully supported by managers and staff to ensure that discrimination is avoided                    |
| <b>If you identified potential discrimination is it minimal and</b>  | No   |

|   |   |
|---|---|
| <b>justifiable and therefore does not require a stage 2 assessment?</b>             |   |
| <b>When will you monitor and review your EqIA?</b>                                  | Alongside this policy/procedure when it is reviewed.  |
| <b>Where do you plan to publish the results of your Equality Impact Assessment?</b> | As Appendix 3 of this policy/procedure on the Trust approved document management database on the intranet, under 'Trust policies, procedures and leaflets'. |

## **FURTHER APPENDICES**

The following appendices are published as related links to the main policy /procedure on the Trust approved document management database on the intranet, under 'Policies & Q-Pulse':

| <b>No.</b> | <b>Title</b>  | <b>Unique ID</b> |
|------------|---|------------------|
| 4          | Gender Identity - Workplace Transition Plan                               |                  |
| 5          | Gender Identity Transitioning at Work – Frequently Asked Questions (FAQs) |                  |

### **Appendix 5: Gender Identity Transitioning at Work Frequently Asked Questions (FAQs)**

#### **Q. How is sexual orientation different from gender identity?**

**A.** Sexual orientation and gender identity have no connection with each other. Sexual orientation describes a person's physical, romantic and/or emotional attraction to another person (e.g. straight, gay, lesbian, bisexual). Gender identity describes a person's internal sense of being a man or a woman (or someone outside of that gender binary).

#### **Q. What does gender transition involve?**

**A.** Gender transition is different for every person. Some people may change the way they dress, their appearance, their name and the pronoun used to address them (he, she or they). Some people change their identification documents, like their driving licence and passport. Some people undergo hormone therapy or other medical procedures to change their physical characteristics. No specific set of steps is necessary to "complete" a transition – it's a matter of what is right for each person.

#### **Q. Will a trans person's sexual orientation change with their identity?**

**A.** Not necessarily. A trans person may be attracted to either or both sexes, the same as prior to their transition. (e.g. a person who transitions from male to female and is attracted solely to men would typically identify as a straight woman. A person who transitions from female to male and is attracted solely to men would typically identify as a gay man).

#### **Q. If I knew a person before they transitioned, is it OK to tell their work colleagues?**

**A.** Absolutely not. Sharing personal details about a trans person before they underwent their transition is an invasion of privacy and could be regarded as a breach of the Equality Act 2010. Disclosure of a trans person's position or intended outcome is a Trans Hate Crime and prosecution may result if this is

witnessed. Unless that person has given you permission to share this information, you should not communicate it with anyone.

**Q. How do I know which pronoun to use?**

**A.** Ask what pronoun the person would like to be used – whilst it may seem a little awkward, it is far more preferable than using the wrong pronoun. You could always listen to the pronoun used by other people – in particular someone who knows the person well will probably use the correct pronoun. If you do accidentally use the wrong pronoun, make sure you apologise try not to make the same mistake again. The continued intentional use of incorrect pronouns is a Trans Hate Crime and prosecution may result if witnessed and would be managed under the Disciplinary Policy and Procedure within the Trust.

**Q. What is the law around treatment of transgender people?**

**A.** All transgender people are entitled to be treated with dignity and respect – as all people are. Transgender people must not be discriminated against on the grounds of their gender identity.

**Q. What is a Trans Hate Crime?**

**A.** A hate crime is any criminal offence that is motivated by a prejudice or hate. This can include anything that focuses on the victim's gender or sexual orientation.

**Q. How much information can I ask a transgender person about their transition?**

**A.** You should not ask for any information – the person will share whatever information they feel suitable with others. It is not appropriate to ask where they are in their transition, about reassignment surgery or about their life prior to transitioning.

**Q. What sort of things should I avoid saying to a transgender person?**

**A.** The same sort of things you would avoid saying to a cisgender person (a person who identifies with the gender they were assigned with at birth). Examples might be “I would never have known you were transgender – the surgery is amazing”; “You’re so brave”; “You would pass much better if you wore less/more make-up”; “You look just like a real man”.

**Q. What is the right age to transition?**

**A.** There is no ‘right’ age – it is purely down to the individual whether they are in their early years or later in life.

**Q. Is being trans a mental illness?**

**A.** The term ‘Gender Incongruence’ is listed in the Diagnostic and Statistical Manual of Mental Disorders. Trans people may feel that it is a condition rather than an illness and often feel that being trans is from birth.

**Q. Is there a difference between being a transvestite and being transgender?**

**A.** Transvestites generally dress in clothes of the opposite sex, maybe wearing makeup and accessories for pleasure. Transgender people are in a state of transition and moving from one gender to another. They tend to be at different states in their transition with some living their new identity full time and some not.

**Q. I don't feel comfortable sharing the female/male toilet or changing area with a trans person – what can I do to stop them using it?**

**A.** The person who identifies as male/female or non-binary would use the facilities that correspond to their appearance or somewhere neutral (neither male nor female toilets/changing areas). Trans people are using these facilities to carry out the same needs as others and for no other reason. If you do not feel comfortable, you should use another facility.

Disclaimer: Printed copies of this document may not be the most recent version.

The master copy is held on Q-Pulse Document Management System